

## **Remarks/Arguments**

Claims 18 and 20-29 were pending in the application. With this amendment, claims 18, 20, 21, 24 and 25 are amended and new claims 30-35 have been added. Claims 18 and 20-35 are pending in the application.

Support for the amendment to claim 18 can be found, for example, in the originally filed specification at page 4, fourth paragraph and page 2, sixth paragraph, and in the claims as originally filed. Support for claim 30 can be found in originally filed claim 19. Support for new claims 31-34 can be found, for example, in the originally filed specification at page 5, fifth paragraph and in the Table on page 11. Support for new claim 35 can be found, for example, in the originally filed specification, in the table at page 13, RO8. Claims 20, 21, 24 and 25 have been amended to bring the claims into conformity with the aforementioned amendments. No new matter has been added.

Claim 21 stands objected to as being of improper dependent form for failing to further limit the subject matter of a previous claim. Applicants have amended claim 21 and it is believed that the amendment has obviated this objection.

Claims 18 and 20-29 stand rejected under 35 U.S.C. § 112, second paragraph, as indefinite. Specifically, the Office has rejected the claims based on the use of the term "stabilizing." Applicants have amended claim 18 to replace this term with "improving the color durability and stability of artificial color on hair" to clarify the language of the claim. As discussed at page 1, paragraph 3 of Applicants' specification, one of the problems recognized in the hair color industry is maintaining the vibrancy and durability of artificially colored hair as the hair color may fade or change dramatically over time. The present invention, such as recited in claim 18, is extends or improves the color durability and stability of artificially colored hair. (Specification, at page 2, para. 1). Applicants submit that with the amendment to claim 18, the § 112, second paragraph rejections have been overcome.

Claims 18, 20-22 and 24-29 stand rejected under 35 U.S.C. § 102(b) as anticipated by GB 1,285,547 ("GB '547"). Claims 18, 20, 21, 23-25, 28 and 29 stand

rejected as anticipated by U.S. Patent No. 6,344,183 ("Paul"). Applicants respectfully submit that the pending claims, as amended, are patentable over these cited references for at least the reasons set forth below.

### **Response to Rejections**

The Office rejects independent claim 18 as anticipated by each of GB '547 and Paul. Applicants' invention, as recited in independent claim 18, however, includes features which do not appear to be disclosed or suggested by GB '547 or Paul. More specifically, claim 18 is directed to a method of improving the color durability and stability of artificial hair color on hair. The method comprises the step of applying to artificially colored hair a composition comprising at least pregelatinized amylose starch.

In contrast to Applicants' claim 18, GB '547 relates to "hair setting compositions based on high amylose starches . . . and to a process for setting hair utilizing such compositions.. (GB '547 at page 1, col. 1, lines 11-15). Although GB '547 indicates that its respective starches "may be gelatinized prior to their being utilized in the present hair setting compositions," GB '547 does not appear to disclose a method step of applying to artificially colored hair a composition comprising at least pregelatinized amylose starch. Similarly,. although Paul indicates that its starch "is generally at least partially gelatinized . . . conventionally conducted prior to conversion," Paul also does not appear to disclose a method step of applying to artificially colored hair a composition comprising at least pregelatinized amylose starch. Rather, Paul is related to aerosol hair cosmetic compositions, particularly hair fixative compositions, which contain nonionically derivatized starches and to a process for setting hair utilizing such compositions. (Paul, at col. 1, lines 9-12).

Applicants submit that "[a] claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." M.P.E.P. § 2131 (citing *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987)). Further, "[t]he identical invention must be shown in as complete detail as is contained in the ... claim" in order to anticipate the claimed invention." See M.P.E.P. § 2131 (citing *Richardson v. Suzuki*

*Motor Co.*, 868 F.2d 1226, 1236, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989)). Thus, because both GB '547 and Paul appear to be silent with respect to the application of their respective compositions to artificial color on hair, claim 18 cannot be anticipated by GB '547 or Paul. Such application does not appear to have been contemplated at all by these references. Moreover, Applicants submit that the pending claims are method claims, not composition claims. Thus, the Office's citations to *Atlas Powder Co.* and *In re Best* with respect to "claiming a new use, new function or unknown property" of the claimed starch fails to show that the claimed step of applying to artificially colored hair a composition comprising at least pregelatinized amylose starch, much less that a method of improving the color durability and stability of artificial color on hair comprising the aforementioned step, is anticipated.

For at least the above reasons, claim 18 is not anticipated by GB '547 or Paul. Moreover, claims 20-35 are also patentable for at least the reasons that claim 18, is patentable, but may be separately patentable for additional reasons as well. For example, claim 26 recites that the composition is a rinse-off composition and the rinse-off composition is at least a pre-shampoo treatment. . GB '547 is silent with respect to this feature. Further, GB '547 discloses that the actual use of its composition is to apply its final composition "to the user's wet hair . . . and dried . . . ." (GB '547 at page 4, col. 1, lines 40-51). Thus, GB '547 essentially teaches away from claim 26, or at least it would appear that if GB '547 were a rinse-off composition, it would appear to render the composition of GB '547 unfit for its intended purpose of being a hair setting composition. Similarly, Paul is also silent with respect to this feature, and it would appear that if Paul were made a rinse-off composition, it also would render the composition of Paul unfit for its intended purpose of being a hair setting composition.

In addition to the above, Applicants further submit that amended claim 18 is also patentable over U.S. Patent No. 6,365,140 ("Melby"), which was cited by the Office in the previous Action. More specifically, Melby relates to aqueous solutions of modified starches, modified starch compositions and methods for using such modified starches in personal care applications. The modified starch and aqueous modified starch conditioning additives for hair care products improve wet and dry hair combatibility,

especially tangling, wet comb and reduced static flyaway, sheen and fixative properties, especially curl retention as well as leaving the hair soft and shiny. (Melby, col. 9, lines 26-31). Applicants submit, however, that Melby does not appear to disclose the method of the claimed invention that comprises applying to artificially colored hair a composition comprising at least pregelatinized amylose starch. For at least this reason, the pending claims remain patentable over Melby.

Similarly, Applicants submit that amended claim 18 is patentable over EP Patent No. 0469232 ("Kabushiki"). Kabushiki discloses materials for hair cosmetics. Material is provided which is capable of curing the hair damaged by cold permanent wave treatment, hair coloring treatment, etc. The corresponding material for hair cosmetics is a liquid containing at least one selected from among the group consisting of an extract obtained from corn grains by use of sulphurous acid water solution, water-soluble natural sugar, blood plasma or substitute blood plasma, carrageenan, shellac, a soluble cellulose, keratin, amylose, and an acrylic copolymer. (Kabushiki, at page 3, lines 37-40). Contrary to Kabushiki, Applicants' invention, as recited in claim 18, includes the claimed step of applying to artificially colored hair a composition comprising at least pregelatinized amylose starch. Kabushiki appears to be silent as to a composition comprising pregelatinized amylose starch, as well as the aforementioned method step. Thus, Applicants submit that for at least this reason, the pending claims remain patentable over Kabushiki.

#### **New claims 31-35**

Applicants submit that new dependent claims 31-35 are also directed to subject matter that is patentable over the cited references. Specifically, claim 31 recites that the composition further comprises a polyquaternium compound. Claims 32 and 33 further define types of polyquaternium compounds, and claim 34 recites that the composition further comprises a blend of quaternium compounds. It is respectfully submitted that none of the cited references appear to disclose a method of applying to artificially colored hair a composition comprising at least pregelatinized amylose starch in combination with polyquaternium compounds. Claim 35 has been added to recite that

the nonionically modified starch of claim 23 is hydroxypropyl starch. For at least these additional reasons, claims 31-35 are patentable over the cited references.

## **Conclusion**

In view of the amendments and arguments set forth above, Applicants respectfully submit that the pending application is in condition for allowance. Notice to this effect is earnestly solicited.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read "James C. Abruzzo". The signature is fluid and cursive, with the first name "James" and last name "Abruzzo" clearly distinguishable.

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